UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/SR.29
7 September 1998

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 2 April 1998, at 3 p.m.

Chairman: Mr. SELEBI (South Africa)

later: Mr. CHOWDHURY (Bangladesh)
(Vice-Chairman)

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(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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The meeting was called to order at 3 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 8) (continued) (E/CN.4/1998/5, 32-35, 36/Rev.1, 37 and Add.1, 38 and Add.1 and 2, 39 and Add.1 and Add.3-5, 40 and Add.1 and 2, 41-43, 44 and Add.1 and 2, 111, 129 and 139; E/CN.4/1998/NGO/82 and 99; A/52/387)

1. Mr. BATT (International Institute for Peace) said that arbitrary detentions and torture were sometimes carried out by non-governmental groups, either acting on their own initiative or with the collusion of States. The Pandit community in Kashmir, to which he belonged, had suffered human rights violations of that type since the early 1990s. Some 1,500 Pandit intellectuals had been executed and there were many cases of illegal detention, kidnapping, torture and murder. During the night of 25 to 26 January 1997, for example, a score of men armed with automatic weapons had besieged a village not far from Srinagar. Then, obviously on orders from abroad, they had executed 23 Pandits, including 9 women and 4 children, one a baby of 13 months. That incident was only one in a long series of atrocities committed in Kashmir for more than seven years, with Muslims and foreign tourists among the victims. It was no secret that those inhumane acts were part of a systematic campaign of ethno-religious cleansing carried out by terrorists and mercenaries from abroad. The head of the Harkat-Ul-Ansar organization, based in Pakistan and listed as a terrorist group by the American State Department, had said that his organization was waging a holy war in Kashmir.

2. The Pandit community called on the Commission to condemn the atrocities committed in Kashmir and requested the Special Rapporteur on torture to make an on-site inspection in order to investigate the cruel, inhuman and degrading treatment inflicted upon the inhabitants.

3. Ms. SLESZYNSKA (Christian Democrat International) said that her organization wished to draw the Commission's attention once more to the fate of thousands of refugees who had left Cuba from Port Mariel in 1980. Some had been arbitrarily detained on their arrival in the United States for alleged offences committed in Cuba, others, having committed offences in the United States, had been unjustifiably detained by the Immigration and Naturalization Service on their release from prison. According to the report of the Working Group on Arbitrary Detention (E/CN.4/1998/44/Add.1), Cuban

refugees, such as Félix Gómez, Angel Benito and Cándido Rodríguez Sánchez, had spent over 10 years in detention without charge or trial. The Working Group considered that the deprivation of liberty suffered by those persons for an indefinite period was arbitrary and contrary to articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, and it had requested the United States Government to take the necessary steps to remedy that situation. At the close of 1997, there were still nearly 1,000 Cuban refugees from Mariel in prison in the United States, in breach of a ruling of the Ninth District Appeals Court that any foreigner, even if expellable, was entitled to due process and could not be held in detention for a long period without trial. Such arbitrary detentions were compounded by cruel, inhuman and degrading treatment of the detainees, reported in vain by the Mariel refugees and members of their families to the prison authorities and the American Congress. Her organization hoped that measures would be taken at long last to remedy the situation.

4. Mr. KENNY (International Treaty Four Secretariat) asked the Commission to institute an independent inquiry into an incident that had occurred on 20 June 1978, in which a man by the name of Orval Bear had been seriously wounded and his wife Sandra, who was pregnant at the time, had lost her child as a result of brutal and irresponsible behaviour by members of the Canadian Mounted Police. Since that time, Orval Bear had failed to obtain justice and had continued to be subjected to harassment in spite of the fact that during their trial the officers in question had stated on oath that it had been their intention to kill him.

5. He also drew the Commission's attention to the attitude of the Canadian Government to compensation for the victims of offences committed under the Residential School system. In January 1998, the Federal Government had admitted responsibility in a statement by the Minister of Indian Affairs, recognizing that the system had separated many children from their families, preventing them from speaking their own languages and learning about their heritage and culture. It had left legacies of pain in indigenous communities. It was also admitted that some children had been ill-treated and subjected to sexual abuse. The compensation proposed to the victims was pathetic in view of the number of cases involved. Furthermore, the Federal Government through its Legal Department had issued to the families which had rejected the offers made a letter that merely added insult to injury. His organization asked the Federal Government to re-examine the matter and rectify the situation through consultation.

6. Mr. ULMER (Lawyers Committee for Human Rights) said that his organization had been working in Northern Ireland since the early 1990s and had focused attention on the situation of defence lawyers. It fully concurred with the conclusions and recommendations in the report (E/CN.4/1998/39/Add.4) by the Special Rapporteur on the independence of judges and lawyers, particularly regarding the outstanding questions surrounding the murder of the defence lawyer Patrick Finucane. As the Special Rapporteur pointed out, so long as that murder was not elucidated, many in the community would continue to lack confidence in the ability of the Government to dispense justice in a fair and equitable manner. Some had argued that the resolution of such issues depended on the resolution of the larger political impasse, but his

organization took the view that, on the contrary, the parties involved would be unable to make political concessions until they felt confident that their basic rights would be respected.

7. The Commission should encourage the United Kingdom Government to continue the process initiated by establishing a three-judge panel to inquire into the occurrences on "Bloody Sunday" in January 1972, and initiate a similar inquiry into the murder of Patrick Finucane. It should also consider repealing the emergency legislation, which had been linked to serious human rights violations and had exacerbated the conflict. The special procedures for dealing with persons charged with security offences were in contravention of international standards. As the United Kingdom Government moved to incorporate the European Convention on Human Rights into domestic law, it should withdraw its derogation of article 5 (3) of the Convention, and comply with the 1996 judgement in the Murray case by the European Court, which had found that the removal of the right to remain silent, combined with restrictions on access to legal advice, was in breach of the right to fair trial. The United Kingdom Government should encourage the widest possible consultation with civil society and international experts with a view to the drafting of a bill of rights for Northern Ireland.

8. Mr. GALNARES (International Federation for Christian Action for the Abolition of Torture), also speaking on behalf of 48 Mexican organizations, said that the use of torture in Mexico as a method of police investigation and as a tool for political repression by the armed forces was to be strongly condemned. Impunity was one of the most disturbing aspects of the matter. The victims of ill-treatment were generally afraid to complain because of the close links between the prosecution and the police. Furthermore, complaints rarely led to effective results. Out of 1,200 complaints received by the national Human Rights Commission only some 50 had led to court proceedings. Since 1996, torture had become systematic, mainly in the states of Guerrero, Oaxaca and Chiapas, as part of the operations to eliminate alleged members of the People's Revolutionary Army. Unfortunately, confessions obtained under torture could be used in evidence even when they were later retracted.

9. His organization demanded an end to arrests without a warrant, and to torture to extort confessions; that the initial statements made by arrested persons should not be admissible as evidence; and that the Mexican Congress should authorize public human rights commissions to bring criminal actions against those responsible for serious human rights violations. The Government must also comply scrupulously with all the recommendations in the report (E/CN.4/1998/38/Add.2) of the Special Rapporteur on torture, and recognize the competence of the Committee against Torture to consider communications from private individuals. It would also be desirable for the Mexican Government to participate in the elaboration of the draft optional protocol to the Convention against Torture, which would allow members of the Committee to make periodic visits to detention centres.

10. Mr. LEWIS (United Nations Children's Fund (UNICEF)) said that children were often forgotten in discussions of human rights violations, and he wished to emphasize that the systematic abduction of children by the so-called "Lord's Resistance Army" in northern Uganda had no equivalent anywhere on the face of the Earth. It was true that children were often swept into the vortex

of conflict, but the unique feature of what was happening in northern Uganda was the deliberate targeting of children. Over the past four or five years between 6,000 and 8,000 children had been abducted. Approximately half had succeeded in returning home, all of them bearing indelible physical and emotional scars. From what they reported, a quarter of those who had disappeared were still in captivity, and the rest almost certainly dead. If ever there was a case for the world to rally and put an end to infamy, it was such a psychotic war on children.

11. With the assistance of the Office of the High Commissioner for Refugees and the Sudanese Government, UNICEF had succeeded in repatriating to Uganda 14 children and 3 adults who had been abducted by the Resistance Army but had succeeded in escaping to Sudan, and it hoped to do likewise with the 2,000 children thought to be still in the hands of the Resistance Army. His organization appealed to the international community, through the Commission, to make a supreme effort to bring the reign of terror of the Lord's Resistance Army to an end. If there was no change, many children from northern Uganda would never see the fifty-first anniversary of the Universal Declaration of Human Rights.

12. Ms. RISHMAWI (International Commission of Jurists (ICJ)) said that her organization welcomed the report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/1998/39) and endorsed the conclusions in the three addenda on his missions to Belgium, Peru and Northern Ireland. Regrettably, the report of the Special Rapporteur on Colombia had still not been published. The ICJ had documented the cases of 19 jurists who had been harassed in Colombia in 1997 and considered that the impunity granted to those who committed human rights violations undermined the system of justice. The situation in Turkey was particularly disturbing: lawyers were deterred from representing cases unpopular with the Government for fear of imprisonment or closure of their offices. Her organization was following 44 such cases in Turkey, including the cases against 16 lawyers from Diyarbakir.

13. In Nigeria, the Government continued to rely on military tribunals operating outside the regular constitutional order, and on decrees that blocked judicial review. It also frequently refused to respect court rulings. With regard to Myanmar, the ICJ had documented cases of at least 47 lawyers whose licence to practice had been withdrawn for allegedly participating in political activities. In addition, one lawyer had died in detention and 53 others were still detained. Another cause for grave concern lay in Malaysia's continued threats to the immunity under international law of United Nations Special Rapporteurs, as exemplified by the case of the civil suit filed against the Special Rapporteur on the independence of judges and lawyers. That matter should be immediately brought to the International Court of Justice, as required by the 1946 Convention on Privileges of the United Nations.

14. Mr. Chowdhury (Bangladesh), Vice-Chairman, took the Chair.

15. Ms. GOMEZ (Indian Movement "Tupaj Amaru") said that, in his report (E/CN.4/1998/38), the Special Rapporteur on torture mentioned that the Human Rights Committee had deplored the fact that massive and flagrant human rights violations, in particular torture and other degrading treatment (para. 82)

were continuing to occur in Colombia, where anyone making justified social claims was subjected to repressive measures. At the present time, 20 workers for the State company Ecopetrol, including Mr. Jorge Carrillo, had been in prison for 16 months. Their defenders, in particular Mr. Eduardo Umaña Mendoza, were constantly threatened and harassed. Colombia had more than 2,000 political prisoners, including Nelson Campos and José Antonio Lopez Bula, two members of the Patriotic Union. The lawyer defending the latter, Jesús María Valle Jarramillo, had been killed in Medellín a month previously. The detention conditions in Colombian prisons were so disgraceful that there had been 50 mutinies in 1997 alone. His organization called on the Commission to appeal to the Colombian Government to respect legality, the right to a defence and the principle of the presumption of innocence, and to put an end to regional and "faceless" justice.

16. In Peru, the detention conditions of 23,000 prison inmates, including 5,000 political prisoners, were equally disgraceful. The visit in January 1997 by the Working Group on Arbitrary Detention to some of the country's prisons had opened up the prospect of improvement in conditions. Detainees at the Canto Grande prison had, however, been arbitrarily transferred to the Yana Mayo prison for having peacefully protested against the refusal to allow them to meet members of the Working Group. That prison, at an altitude of 4,000 metres, was a veritable institute for terminal cases. In his report on his mission to Peru in September 1996 (E/CN.4/1998/39/Add.1), the Special Rapporteur on the independence of judges and lawyers urgently requested the authorities to give lawyers the necessary safeguards to carry out their duties without intimidation, harassment or threat. He also urged the Government not to identify defence lawyers with the causes espoused by their clients (para. 145). Nevertheless, a number of lawyers who had defended political prisoners were still in prison.

17. In Bolivia the situation of detainees was tragic. More than 5,000 of them, mostly indigenous coca growers accused of drug trafficking, were living with their children in penal settlements under degrading conditions.

18. His organization requested the Commission to appoint a permanent special rapporteur and to require the above-mentioned countries to apply the recommendations of rapporteurs, to put an end to arbitrary detentions and torture, and to ensure respect for due process.

19. Mr. SAFA (International Organization for the Elimination of All Forms of Racial Discrimination) said that he wished to draw the Commission's attention to the tragic fate of Lebanese and Arab detainees in Israeli prisons. In the Khiam detention centre, 160 Lebanese, including 15 children had been detained without charge or trial, totally cut off from the world, since October 1997. In Kishon prison, Ibrahim Iskandar Abu Zaïd, Boulus Abu Zaïd and Ivon Sweidi, who had been kidnapped on 22 November 1997 by Israeli forces in the region of Jezzin, had been tortured. Some 70 detainees in prisons were seriously ill - in particular Lafi Al Masri, Suleiman Ramadan, Ali Hijazi and Huda Asad-Allah Madeh - and should be urgently transferred to hospitals.

20. Around 50 Lebanese were held in prisons in Israeli territory, some of whom had never been tried and others had completed their sentences 10 years ago. On 4 March 1998, the Israeli High Court of Justice had stated that

Lebanese detainees were considered as hostages to be utilized in negotiations. The detainees were considered by Israel simply as bargaining chips. It was a truly scandalous situation in international law.

21. His organization requested the Commission, on behalf of the Arab Organization of Human Rights, to condemn the decision of the Israeli High Court of Justice concerning the Lebanese detainees, to ask Israel to liberate them immediately, to authorize visits by their relatives from Arab countries under the supervision of ICRC, to release all sick persons and all persons under administrative detention, to authorize visits by ICRC and humanitarian organizations and families of the detainees to the Khiam, and to invite human rights defence organizations to carry out inspections of that and other Israeli detention centres. The United Nations should also send an international inquiry commission to the Khiam detention centre to establish the causes of the deaths of a number of detainees.

22. Ms. BAUTISTA (Latin American Federation of Associations of Families of Disappeared Detainees (FEDEFAM)) said that, as pointed out by the Working Group on Enforced or Involuntary Disappearances in its report (E/CN.4/1998/43), in Mexico the total impunity enjoyed by those responsible for enforced disappearances had led to a resurgence of the problem. Indeed, most cases of enforced disappearances were not cleared up and in actual fact the families of disappeared persons were subjected to harassment.

23. The situation was the same in other countries. In Colombia, the premises of the Association of Families of Disappeared Persons (ASFADDES) had been targeted in a bomb attack which had completely destroyed the Association's records and facilities. In Argentina, the records of the Association of Families of Detainees and Disappeared Persons in Buenos Aires had been stolen, along with computer hard disks containing valuable information on investigations linked to the dictatorship conducted in Spain by Judge Baltazar Garzón. She herself had been forced to leave Colombia with her family because of constant threats. She asked for the case concerning the disappearance of her sister to be taken up not by the military but by the civil courts, for according to the Constitutional Court enforced disappearances were not to be regarded as an act committed while on active duty.

24. Lastly, the independence of the judiciary should be strengthened, in accordance with the recommendations in the Vienna Declaration and Programme of Action, so that perpetrators of atrocious crimes, such as enforced disappearances, were brought to justice.

25. Mr. BAHN (Himalayan Research and Cultural Foundation) said that human rights were gravely imperilled when nation States encouraged and supported terrorist activities and hostage-taking. For that reason, the international community should call to account the country which authorized the terrorist group, Harakatul Ansar, alias Al Faran, to launch terrorist operations from its territory. It was the group which had taken five European hostages in Kashmir and killed one of them, Mr. Hans Christian Ostro, in 1995. More recently, in January 1998, 23 Kashmiris from the Pandit community, including 9 women and 6 children, had been brutally murdered by the terrorists. In

Kashmir, the population longed for peace and democracy, but terrorists brought a reign of terror and prevented the population from enjoying their rights and participating in the peace efforts.

26. His organization urged the Commission to request the General Assembly and the Security Council to take stern measures against countries that supported mercenaries and terrorist organizations. Respect for the rights of innocent peoples threatened by terrorists and armed groups was at stake.

27. Mrs. ARIF (World Society for Victimology) said that in India, a country which had ratified both the International Covenant on Civil and Political Rights and the Convention against Torture, torture was widely practised by State agents, particularly in occupied Jammu and Kashmir, the Punjab and the north-eastern States. Amnesty International, Human Rights Watch, the American State Department, the Special Rapporteur on torture, and even two Indian fact-finding teams, were agreed that in Jammu and Kashmir in particular, torture was the rule rather than the exception and rape was used as an instrument of repression by the Indian occupation forces. For example, human rights defence organizations reported that during the night of 22 April 1997 soldiers of the 13th Rajhastan Rifles had raped a 32-year-old woman in the village of Wawoosa and her four daughters, aged 12, 14, 16 and 18. The Indian occupation forces had set up a secret army of "Sarkari", or pro-India elements, who committed murder, looted and tortured at will.

28. The World Society for Victimology asked for the Commission's Special Rapporteurs on torture and extrajudicial executions and international human rights NGOs to visit occupied Kashmir and for the victims of acts of torture and their families to receive financial aid from the United Nations Fund for Torture Victims.

29. Mr. SIDI EL MUSTAPHA (World Federation of Democratic Youth) said that he had been arrested in Smara in October 1992 when he had been peacefully demonstrating together with other Sahrawis against the Moroccan occupation and in favour of a free referendum on Western Sahara. Many peaceful demonstrators, the majority of them women, including Soukheina Jadd-Ahlou, had been wounded by the forces of law and order. Scores of persons had been arrested and tortured.

30. For his own part, he had suffered physical and mental torture, more particularly at the El Ayun secret detention centre. He had been convicted, in camera, by a military court in Rabat for offences against the "external security" of the State and then placed in a military prison in Bensergaou. It was there, for the first time, that an ICRC delegation had been able to visit him. He had been released on 2 May 1996 as a result of action by Amnesty International, but had been placed under house arrest. For that reason, he had decided to flee his country.

31. The Sahrawi people placed great hopes in the holding of a referendum on self-determination. They hoped that the international community would not remain indifferent to the serious human rights violations the occupation authorities continued to perpetrate against the Sahrawi people and that light would be shed on the disappearance of hundreds of missing Sahrawis.

32. Ms. ABEYESEKERA (Women's International League for Peace and Freedom) pointed out that, according to the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1998/43), it was in Sri Lanka that the largest number of disappearances had been reported in 1997. What was more, the perpetrators of the disappearances reported to the presidential commissions of inquiry into disappearance had not been followed up. Worse still, members of the Sri Lankan security forces implicated in cases of abduction, murder, disappearance and torture had been acquitted or released.

33. In addition to the cases of rape mentioned by the Special Rapporteur on torture in his report (E/CN.4/1998/38/Add.1, paras. 393-395), a number of other rapes committed by members of the armed forces had been reported in recent months. In two such cases, the soldiers responsible had been taken into custody, but in the other cases no complaint had even been filed owing to intimidation of the victim and the witnesses. In March 1998, two of the principal accused in one key case had escaped from the courts in Colombo in suspicious circumstances.

34. In Sudan, very many disappearances had been reported in the southern part of the country and in the Nubian mountains. Moreover, special missions of inquiry set up by the Sudanese Government had failed to provide any appropriate information on those allegations and had not granted compensation to the relatives of the disappeared persons. In December 1997, women's human rights organizations throughout the world had protested to the Sudanese Government because over 50 Sudanese women peacefully protesting against compulsory conscription had been beaten up and imprisoned. Thirty-four of them were said to have been flogged in prison. The Sudanese Government had done nothing to look into the incident and to compensate the victims.

35. Her organization called on the Commission to make a strong statement condemning the use of rape and sexual violence against women by members of the armed forces and security forces and to take up the question of the immunity of members of the security forces guilty of human rights violations in Sri Lanka and Sudan. Condemnation of the perpetrators of human rights violations could alone deter other persons from committing such acts.

36. Ms. LITTLE (Andean Commission of Jurists) said that her organization, concerned to facilitate the reform of justice in the Andean countries, had launched a programme known as "Andean Judicial Information Network" whereby the judiciary in the six countries in the Andean region could contact each other. The Network would strengthen judicial cooperation and indicate what the position was regarding justice and the reforms under way in those countries. Despite some progress, the population was still suspicious about the court system, more particularly because of slow procedures, a lack of independence among judges, and corruption. For that reason, the Andean Commission of Jurists stressed the need to ensure an independent judiciary.

37. Her organization welcomed the Working Group on Arbitrary Detention's recent mission to Peru, where the ad hoc commission, consisting of the Ombudsman, the Minister of Justice and the representative of the President of the Republic, had succeeded in securing the release of 360 people held

unjustly in custody. It was an encouraging start. It was also important to emphasize that there would no longer be any hooded judges in the ordinary courts.

38. In Colombia, the establishment of a regional system of justice in courts with hooded judges contravened article 14 of the International Covenant on Civil and Political Rights. Accordingly, the efforts being made in the region to reform the legal system and thus better guarantee human rights must be encouraged.

39. Mr. MARENDAZ (Pax Christi International) said that the human rights situation in Turkey had not improved over the past year. The number of political prisoners was still very high, prison conditions were lamentable, torture was endemic and enforced disappearances were numerous in Turkish Kurdistan. Furthermore, the new Criminal Code placed further restrictions on the freedom of expression.

40. As far as the Israeli-Palestinian peace process was concerned, respect for human rights by both parties was obviously a key factor. The continued imprisonment of some 3,500 Palestinian prisoners in Israeli jails was a violation of the Fourth Geneva Convention and the Oslo Agreements. Moreover, his organization was particularly concerned about the legalization of the use of "moderate physical pressure" - in fact simply a legalization of torture - on Palestinian detainees suspected of terrorism.

41. Pax Christi International was also very concerned about lapidation in Iran. It was a cruel and inhuman sentence imposed more especially on women suspected of adultery. One young Iranian woman, Zoleykkah Kadkhoda, had survived such horrible punishment and might well be subjected to it again. His organization was equally concerned about the death sentence by lapidation of a German citizen, Helmut Hofer, accused of having sexual relations with an unmarried Iranian woman. Pax Christi International urged the Commission to take those matters into account in the resolution it was to adopt in connection with Iran.

42. The human rights situation in East Timor was still deteriorating. His organization was convinced that human rights violations would last as long as Indonesia failed to recognize the rights of the Timorese to self-determination.

43. Arbitrary arrests, torture, deportations and enforced disappearances were still widely practised by the Moroccan forces in Western Sahara. For example, on 24 February 1998, about 20 peaceful demonstrators had been arrested and were still missing. His organization called for them to be released, along with Mohammed Daddach, who had already spent more than 20 years in Moroccan jails. Pax Christi International joined with the families of missing Sahrawis who had been demanding justice for many, many years.

44. In Kosovo, ethnic Albanians were the victims of discrimination, particularly in the legal system, the right to a defence was ignored and

torture was used to extort confessions. The Federal Republic of Yugoslavia should put an end to repression and engage in open discussion to solve a problem that could well set the entire region ablaze.

Statements made in exercise of the right of reply

45. Mr. EL HAJJAJI (Observer for the Libyan Arab Jamahiriya), in response to comments by the Arab Organization for Human Rights concerning the disappearance of Mr. Mansour al-Kikhia, said that he had not only been the Libyan Minister for Foreign Affairs but also Libya's Permanent Representative of the United Nations in New York and had held many important posts in his country. Mr. al-Kikhia had never been an opponent of the Libyan Government, even though his opinions had sometimes differed from the Government's. He and his family had never been cut off from their country. After Mr. al-Kikhia's disappearance, Libyan officials had fully cooperated with his wife and she had thanked them in person. Contrary to the assertions by the Arab Organization for Human Rights, the Libyan authorities had done everything to locate Mr. al-Kikhia and to shed light on the circumstances of his disappearance.

46. Mr. SOKHONA (Observer for Mauritania) pointed out to IFHRL and France-Libertés that the persons they had mentioned were not human rights activists but fully-fledged members of political parties who were trying to collect funds for their own personal use. Those persons, who were very controversial in their own country, including in opposition circles, in no sense enjoyed the respectability attributed to them by those two non-governmental organizations, and had recently taken to encouraging sectarian and extremist organizations and waging campaigns to defame the country and its institutions. They had been questioned, then tried and sentenced in conformity with their country's laws and regulations before being pardoned. They had been dealt with humanely, with full respect for their physical and moral integrity. Their case had been equitably heard in public, without interference from the Executive, and their right to a defence had been fully guaranteed.

47. In a State governed by the rule of law, the law applied also to genuine defenders of human rights and, all the more so, to those who made use of that cause for petty reasons. Mauritania's political, administrative and judicial institutions had no need of, nor did they seek, the seal of approval of those two NGOs; their legitimacy lay in the will of the people, frequently expressed in free, pluralist and transparent elections.

48. Mr. AL-FAIHANI (Observer for Bahrain) said that the allegations by an NGO concerning the treatment of detainees in his country were unsubstantiated and merely encouraged political extremism. In Bahrain all detainees were treated strictly in accordance with the law. At the time of arrest, relatives were informed of the date and place of the arrest, the reason, and they could then make regular visits. Nobody was held incommunicado or tortured. Detainees enjoyed the guarantees set out in the Constitution and the Penal Code, under which torture was a crime, as well as in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Bahrain was a party. They were held in regular places of detention where they were afforded medical care. They had the right to be represented at any time by a lawyer of their choice or,

failing such a lawyer, by one appointed for him by the court. They were tried in civil courts, including the State Security Court, which was actually the High Court of Appeal. Lastly, all trials were conducted strictly in accordance with due process of law as laid down in the Code of Criminal Procedure and the Penal Code.

49. Mr. Selebi (South Africa) resumed the Chair.

50. Mr. AL-MUSIBLI (Observer for Yemen) said that the allegations by the newspaper Libération did not concern human rights violations but political plots organized under the pretext of protection of human rights. The Constitution, the laws and the conventions and treaties signed by Yemen, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, afforded legal guarantees of the observance of human rights. Every citizen was entitled to the fundamental freedoms and to lodge an appeal if he considered that his rights had been infringed. He called on countries and organizations to verify their sources of information and to make constructive criticism.

51. Mr. HUU HAI (Observer for Viet Nam) said it was deplorable that some persons continued to speak on behalf of the International Federation of Human Rights Leagues or Pax Romana in order to spread irresponsible distortions, allegations and even lies. Not only did they know little about the situation in Viet Nam but they deliberately closed their eyes to realities and to the development of the country, which were known to the world. Obviously, their presence in the Commission did not foster cooperation and dialogue, which should reign over the Commission's work in the interests of human rights.

52. Mr. HAMIDON (Malaysia) said that, in connection with the defamation suit faced by Mr. Cumuraswamy, Special Rapporteur on the Independence of Judges and Lawyers, the Government of Malaysia and the United Nations were working closely to resolve the matter at the highest level. Malaysia welcomed the efforts by the United Nations Secretary-General and his Special Envoy, Mr. Fortier, which had moved the talks ahead. His country was now giving the most serious consideration to the views and recommendations advanced by Mr. Fortier and by the United Nations Secretariat itself.

53. Mr. BENJELLOUN-TOUIMI (Morocco) said that two organizations had defamed his country. It was regrettable that some NGOs spoke irresponsibly of disappearances or arbitrary detentions without ever producing any evidence or going through the Commission's machinery, which, with the cooperation of the Moroccan delegation, would clarify the facts. In that regard, he would emphasize that the Moroccan Government had welcomed the report by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1998/43) for its cooperation and for the information it had supplied in endeavouring to clarify all the cases brought to its attention.

DRAFTING OF A DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (agenda item 19) (E/CN.4/1998/98)

54. Mr. HELGESEN (Chairman-Rapporteur of the Working Group to Draft a Declaration on the Rights and Responsibility of Individuals, Groups and Organs

of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms), presenting the Group's report on the work of its thirteenth session (E/CN.4/1998/98), said it was gratifying that the draft Declaration had finally been adopted by consensus. No delegation was completely satisfied with the text, but every delegation strongly felt the need for such a declaration. In his opinion, the draft was the best compromise possible.

55. He wished to thank all those who had worked for the adoption of the draft, and particularly the Commission, which had extended the Working Group's mandate from year to year. He was convinced that Governments had been so concerned to draft a text which dealt with such ccmplex legal and politically sensitive issues precisely because it was their intention to abide by their commitments. He had himself met some years ago a talented young jurist who had courageously worked for the cause of human rights in her country and had paid for it with her life. Accordingly, he knew how those who defended human rights needed not only to be respected but to be effectively protected. For that reason, he sincerely hoped that the Declaration would be adopted by the United Nations General Assembly and then effectively implemented by all Governments.

56. Mr. LILLO (Chile) said he was persuaded that the draft Declaration would help to strengthen the action and improve the protection of human rights defenders. In his opinion, even if it was a compromise text, it enabled the international community to acknowledge at last the legitimacy of the work of human rights defenders, their fundamental contribution to protecting those who were the victims of human rights violations and their legitimate right to financing so that they could successfully carry out useful and often heroic work.

57. The completion of the work on the draft Declaration, which his delegation would like to see adopted by the General Assembly in context of the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, did not mean that the Commission's task was over. It would then have to monitor the implementation of the declaration and periodically evaluate its effectiveness.

58. Lastly, his delegation wished to announce that it would be a co-sponsor of the draft resolution the Norwegian delegation would be submitting on protection of the rights of human rights defenders.

59. Mr. LOFTIS (United States of America) strongly recommended that the Commission adopt by consensus the draft resolution whereby the draft Declaration on human rights defenders would be transmitted for adoption by the General Assembly, even though some provisions were inconsistent with existing State obligations. It was also a matter of some regret that the draft resolution was not the first to be adopted by the Commission at the present session.

60. His delegation wished to emphasize the crucial role that the NGOs had played in drafting the Declaration and, more generally, in spreading to every corner of the world the concept of universal human rights. Human rights defenders undeniably needed the support and protection of the international

community. However, a declaration was not enough. Ultimately, it was for every State to protect them, as it was for the Commission to measure how States honoured their human rights commitments. He wished to pay particular tribute, among human rights defenders who were the victims of threats, imprisonment, torture and even murder, to journalists who risked their lives to expose corruption in high places and waged a struggle against totalitarian rule.

61. His delegation emphasized the importance of, among others, article 1 of the Declaration on human rights defenders, which pointed to the universality of human rights and fundamental freedoms, for 50 years after the adoption of the Universal Declaration of Human Rights, some Governments still sought to deny their citizens those rights. For that reason, the Declaration provided another weapon to wield in defence of human rights and the Commission must not be afraid to use it.

62. Mr. SPLINTER (Canada) said it was fitting that in the same year as the fiftieth anniversary of the Universal Declaration of Human Rights the Commission should be invited to adopt the draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The text was the outcome of 13 years of hard work in the Group and testimony to what patience, determination and willingness to work constructively could accomplish.

63. The Canadian delegation had been an active participant in the elaboration of the draft Declaration in cooperation with representatives of other countries and non-governmental organizations and it wished to pay special tribute to the Working Group's first two Chairmen-Rapporteurs. It also congratulated and warmly thanked the current Chairman-Rapporteur, Mr. Ian Helgesen, and his country, Norway, for the support it had given him. His delegation looked forward to the adoption of the Declaration on human rights defenders by the General Assembly on 10 December 1998.

64. Mrs. GLOVER (United Kingdom), speaking on behalf of the European Union and Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, said it was obvious that the efforts of States and intergovernmental organizations to put an end to human rights violations were not enough and it had to be recognized that individuals and non-governmental organizations also had an indispensable role to play. Tribute should therefore be paid to those men and women around the world who devoted themselves to the defence and promotion of human rights, whether individually or as part of non-governmental organizations, and whose work was difficult and often dangerous. The rights of those activists themselves were violated all too often, and States were therefore under a duty, both collectively and individually, to protect them.

65. Consequently, it was gratifying that the Working Group had finally managed to reach a consensus on the text of a declaration, as a result in no small part of the tireless efforts of the present Chairman, Mr. Helgesen, and his predecessors. That success was due to the constructive spirit in which the latest session of the Working Group had taken place and the cooperation between participating States and NGOs who had worked together to achieve a

common aim. Admittedly, it was a compromise text, for which reason the drafting work had lasted 13 years, but by and large it recognized the invaluable and often heroic role played by human rights defenders around the world in protecting and promoting those rights and fundamental freedoms. Furthermore, the Declaration would apply not only to human rights organizations but also to all the individuals who, in their own countries, courageously spoke out against human rights violations.

66. Her delegation and the countries of the European Union considered that adoption of the draft Declaration by the Commission, then by the General Assembly, would be an appropriate way to celebrate the fiftieth anniversary of the Universal Declaration of Human Rights.

67. Mr. ALFONSO MARTÍNEZ (Cuba) said that he joined in the congratulations expressed by previous speakers to the Working Group to draft the declaration on human rights defenders. The Group's task, not an easy one right from the start, had been made even more difficult by the attempts by some States to institute a "new world order" based solely on their ideas and principles. However, the consensus text ultimately adopted by the Working Group as a result of the efforts of Mr. Helgesen, its Chairman-Rapporteur, was unequivocal evidence of the results that could be achieved by giving up confrontation and opting for cooperation and, instead of imposing one's own criteria on the issue of human rights, recognizing diversity of approach in that field. As the representative of the United Kingdom had noted, it was a compromise text which consequently had both qualities and shortcomings, but clearly and concretely set out a cluster of "game rules" in which both Governments and individuals, groups and non-governmental organizations could consciously assume their responsibilities in regard to promoting and protecting human rights and fundamental freedoms.

68. Since Cuba had for many years endured attempts at interference in its internal affairs under the pretext of protection of human rights and had been the target of many campaigns of defamation usually orchestrated by the United States, his delegation attached particular importance to articles 3 and 13 of the draft, which acknowledged the primacy of domestic law, and also article 20, which reaffirmed that defence of human rights in another country could not be used as a pretext by a State to violate the principles set out in the Charter of the United Nations. Accordingly, efforts to protect human rights could not be consistent with the law if they were detrimental to the principle of the sovereign equality of all States, enunciated in Article 2 of the Charter. More especially his delegation welcomed the emphasis placed in the preamble to the draft Declaration on the instrumental role of international cooperation in ensuring effective respect for human rights and fundamental freedoms in accordance with the provisions of Articles 1, 55 and 56 of the Charter.

69. His delegation reaffirmed that it would support the adoption, in the Commission and the Economic and Social Council and in the General Assembly, of the draft declaration, which was the outcome of 13 years of hard work.

70. Mr. THEMBA KUBHEKA (South Africa) said it was gratifying that the international community was at last in a position to adopt a declaration recognizing the courageous task performed by human rights defenders. The

Declaration was of special importance to South Africa, where, under the apartheid regime, hundreds of persons had paid with their lives for the work they had done to secure respect for those rights. For that reason, his delegation had closely followed the Group's work and made an active contribution to it. Emphasis should also be placed on the active and positive role played by the NGOs throughout the process of elaborating the draft Declaration, which enunciated essential rights already enshrined in the Universal Declaration of Human Rights and the two International Covenants that had to be fully guaranteed. He also stressed the obligation of States to fully protect and promote human rights and fundamental freedoms, and the right of every individual to criticize the human rights situation in his country and to make proposals to improve it, and above all the right to solicit and receive resources for the purposes of promoting and protecting human rights through peaceful means.

71. His delegation hoped that the draft Declaration would be adopted by the Economic and Social Council and then by the General Assembly at its fifty-third session. Nevertheless, adoption of a Declaration on human rights defenders should not become a goal in itself. It was essential then to effectively implement the rights set out in the Declaration. For that reason, his delegation considered that the matter should remain on the Commission's agenda.

72. Mr. DU Zhenquan (China) said that the draft Declaration adopted by the Working Group was the product of the concerted efforts of the international community. It laid down for individuals and groups a framework of rights and responsibilities in activities to promote human rights. It also emphasized the fact that the primary obligations and responsibilities to promote and protect human rights lay with the State. The draft therefore struck a balance between individuals and groups on the one hand and the State on the other, and between rights and responsibilities. All individuals, groups and organs of society should therefore refrain from abusing the provisions of the Declaration in order to engage in activities in violation of the purposes and principles of the Charter of the United Nations.

73. The Economic and Social Council and the General Assembly should also take account of the views and concerns of all countries in considering the draft Declaration. Once the draft was adopted, the complex issue of implementation would then arise and a prudent attitude would be adopted in that regard.

74. The long process of elaborating the draft Declaration had shown that only dialogue and cooperation on the basis of equality and mutual respect could lead to consensus. His delegation, which had played an active part in the discussions in the Working Group and in the process, stood ready to work with the international community to further strengthen international cooperation in the field of human rights.

75. Mr. SUAREZ FIGUEROA (Venezuela) emphasized the particularly important role played by non-governmental organizations in promoting human rights. The NGOs could place democracies on their mettle by constructive criticism, vigilance and cooperation in their particular fields. His Government, well aware of that matter, had requested the participation of non-governmental

organizations in the preparation of a wide-ranging national human rights programme in July 1997. Indeed, it was for Governments to ensure respect for human rights, but they could achieve that goal only with the cooperation of civil society, whether or not organized. For that reason, his Government had supported the work of the Working Group to draft a Declaration on human rights defenders and welcomed the fact that it had reached a consensus on the text. His delegation therefore favoured adoption of the draft Declaration by both the Commission and the General Assembly.

76. Mr. CONROY (Observer for Australia) said he looked forward to early adoption by the Commission and then by the General Assembly of the Working Group's consensus draft Declaration. States Members, which had undertaken under other instruments to ensure worldwide respect for all human rights, recognized in the text the crucial role that individuals and NGOs had played and would continue to play in the struggle to promote and to ensure respect for human rights and fundamental freedoms. The purpose of the draft Declaration was to clarify and reinforce rights already recognized in existing instruments and to ensure protection for all human rights defenders the world over. It confirmed the right of any individual to set up a human rights NGO and to communicate with other human rights defenders, as well as the right to receive and utilize voluntary contributions in order to establish and maintain an organization of that type, along with the right of human rights defenders to publish and make known their views and information.

77. His delegation, which had participated closely over the years in the work of the Group, whose two previous chairmen had been Australian, wished to thank the present Chairman, Mr. Helgesen, for his tireless efforts in securing the adoption of the text and it would continue to take part in discussion of issues relating to the Declaration in the Commission.

78. Mr. WILLE (Observer for Norway) said that, for the Commission, the adoption of the draft Declaration prepared by the Working Group was a concrete way, in the year of the fiftieth anniversary of the Universal Declaration of Human Rights, of expressing recognition and support for the crucial role that individuals and NGOs played and would continue to play in protecting human rights and fundamental freedoms. The Declaration was not an attempt to create new rights for a new category of persons. It simply clarified, confirmed and reinforced the importance of those rights, already enunciated in the Universal Declaration and in other instruments. That was true, for example, of the right to peaceful assembly and association, the right to defend the rights of others, the right to public hearings and trials and the right to solicit, receive and utilize resources, as well as the right to an effective remedy and unhindered access to international organizations. The draft Declaration reaffirmed, however, that the State had the prime responsibility and duty to promote, protect and implement human rights and fundamental freedoms and to provide protection for all human rights defenders. Accordingly, it was for Governments to make sure that the Declaration was effectively implemented in all countries and regions.

79. His delegation hoped that, once it was adopted, the Declaration would become a charter for human rights defenders, who were fighting all over the world for a common cause.

80. Mr. HAFEZ (Observer for Egypt) emphasized the political significance of the adoption of the Declaration on human rights defenders after 13 long years of arduous negotiations. The negotiations had ultimately proved successful because, in the Working Group's deliberations, differences of opinion had been recognized as a right and had been respected, all the interests and legitimate concerns of all parties had been taken into account, and all participants had demonstrated good faith in reaching a fair and honourable compromise.

81. It should not be forgotten that the penultimate paragraph of the preamble to the draft Declaration clearly said that States had the primary responsibility in protecting human rights. The role of individuals, groups and NGOs in that regard consisted not in replacing the State but in helping it to discharge its responsibilities. They should in that connection act in observance of the law and in good faith.

82. His delegation, together with other delegations in the Working Group, had endeavoured to take account of the legitimate concerns of all parties in striking a fair balance between everyone's rights and obligations, in a spirit of cooperation and mutual trust, a balance that was reflected in the compromise text which had been adopted. His country fully supported the draft Declaration and hoped that the NGOs would continue to provide active and responsible support for the efforts by States to ensure respect for human rights.

The meeting rose at 6.05 p.m.